

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PACE Southeast Michigan

Employer

and

International Brotherhood of Teamsters,
Local 337

Petitioner

Case No. 07-RC-257046

Case No. 07-RC-257047

**EMPLOYER’S REQUEST FOR REVIEW OF REGIONAL DIRECTOR’S DECISION
AND DIRECTION OF ELECTIONS, REQUEST FOR EXPEDITED CONSIDERATION
OF REQUESTS FOR REVIEW, REQUEST FOR STAY OF ELECTIONS, AND
REQUEST FOR PROMULGATION OF BOARD RULES FOR CONDUCT OF
MANUAL BALLOT ELECTIONS DURING THE COVID 19 PANDEMIC**

INTRODUCTION

Pursuant to Section 102.67(c) of the Board’s Rules and Regulations,¹ the Employer, PACE Southeast Michigan, hereby requests review of the Regional Director’s July 17, 2020 Decision and Direction of Elections (DD&E). Additionally, pursuant to Section 102.67(j)(1)(i) and (ii), the Employer requests expedited consideration of the request for review, or a stay of the mail ballot elections scheduled to begin on July 29, 2020. In addition, the Employer urges the Board to provide policy guidance for manual ballot elections to Regional Directors through rule-making.

These cases arose in Region 7 of the NLRB. On July 17, 2020, the Regional Director issued a Decision, Order Severing Cases and Directions of Elections (hereinafter “Decision”) in the captioned matters. The Employer, PACE (“Program of All-Inclusive Care for the Elderly”) Southeast Michigan, respectfully submits that the Decision: was a departure from existing Board

¹ The petitions were filed prior to the effective date of the Board’s most recent amendments to the Rules and Regulations governing the processing of representation cases (85 Fed.Reg. 17500 (March 30, 2020)). The prior rules thus are applicable to this proceeding.

precedent; is clearly erroneous causing prejudice to all parties in this case, and that there are compelling reasons to overturn the Decision, and/or to establish Board policies for conducting manual ballot elections during the COVID 19 pandemic through rulemaking,

RELEVANT BACKGROUND

PACE is a non-profit organization that specializes in comprehensive health care services for seniors.² The company operates five facilities throughout southeast Michigan within minutes of each other. PACE employs or utilizes a team of physicians, therapists, dietitians, pharmacists, care managers, nurses, and drivers. These team members work with aging adults who face challenging healthcare conditions in their home by providing care, medical treatment and support they need to achieve the highest quality of life.³ PACE's elder care experts offer an alternative to nursing home placement that features comprehensive, coordinated care for the medical, social and physical needs of seniors, while also providing peace of mind for family caregivers. The PACE facilities have the capacity to treat up to 1,500 patients.

On February 27, 2020, Petitioner filed in the captioned matters seeking to represent all full-time and regular part-time Certified Nurse Assistants ("CNAs"), participant care associates ("PCAs") and dietary employees (Case No. 07-RC-27046); and to represent all full-time and regular part-time drivers (Case No. 07-RC-257047). There are approximately one hundred and sixty-six CNAs, PCAs, and dietary technicians in the proposed unit. CNAs are assigned to a particular facility and normally perform their work at that particular facility. Of the total number, there are no more than sixty (60) unit members at any one facility. The facility with the lowest number of CNAs has about eighteen (18).

² See <http://www.pacesemi.org/what-is-pace>

³ See <http://www.pacesemi.org/pace-services>

There are approximately ninety (90) drivers in the proposed driver unit. The drivers are also specifically assigned to a particular facility and normally drive only out of that facility. Each driver must be physically present at the facility at least at the beginning and end of each work shift.

CASE PROCEEDINGS

The parties entered into Stipulated Election Agreements in both cases for both proposed units, approved by the Regional Director providing for manual ballot elections. The elections were initially scheduled to be held on March 26 and March 27, 2020 respectively. That original stipulation was approved by the Regional Director on March 5, 2020.

Against the backdrop of the many COVID directives, on March 16, 2020, PACE requested an indefinite postponement of the manual ballot elections. On March 18, 2020, the Region notified the parties that the manual ballot elections were postponed indefinitely. On March 19, 2020, the National Labor Relations Board (“Board”) ordered the temporary suspension of all board-conducted elections through April 3, 2020 due to the COVID-19 pandemic. On April 17, 2020 the Board issued an announcement regarding the pandemic titled “COVID -19 Operational Status” which includes a recommendation that Regional Director consider safety, staffing and federal, state and local laws and guidance with respect to the scheduling of elections. Thereafter, the Region contacted both parties regarding a possible stipulated agreement to provide for an election.

On June 25, 2020, the Regional Director issued an Order Revoking the Stipulated Election Agreements, Consolidating Cases and Rescheduling Representation Hearing. Pursuant to that Order, the petitions in both cases were consolidated for a formal hearing. The Order asked the parties to address whether the election should be accomplished by manual or mail ballot and whether a manual ballot could safely be conducted in a time of COVID 19 at PACE facilities.

Formal Hearing Proceedings

A formal hearing was held in the consolidated cases, via video conference, on July 6, 2020 before Hearing Officer Natalie Rygiel. Representatives of the Petitioner and Respondent were present. The record includes uncontradicted testimony from three employees of Respondent, Mary Naber the President and CEO of PACE, Dr. Gwen Graddy the Chief Medical Officer, and Raymond Pope the Manager of Human Resources for PACE.

The sole issue to be considered at the hearing was the “appropriate manner of election, manual or mail ballot.” See the Transcript of Proceedings (“Transcript”) at Page 20, Line 15. Preliminarily, it was recognized by the Hearing Officer in the record that the position of both parties was for the Board to order and conduct a manual ballot instead of a mail ballot. See Transcript at Page 17, Lines 7 and 23.

Ms. Naber testified in detail on the unique nature of the services offered by PACE and the role of the CNAs, dietary employees, and drivers. Transcript at pages 22-23. All the employees in the proposed units come in and report to work every day to one of the five PACE facilities. See Transcript at page 29. She also testified to some critical operational issues such as unreliable mail service since COVID and policies and procedures for screening of patients and staff. See Transcript at page 30. COVID-19 protocols were also explained (Transcript at page 25); it was reported that PPE was replaced regularly (Transcript at page 26); and no complaints from any governmental agency were ever lodged against PACE for anything related to COVID-19 and in fact the organization has received “our greatest accolades” during this time. See Transcript at pages 25-26 and 32-33. Temperature checks are taken daily and any person with a temperature over 100 degrees is sent home and advised to contact a primary care provider.⁴

⁴ This requirement is even more stringent than the CDC guidance, which calls for quarantine and expulsion of individuals with temperatures in excess of 100.4 degrees.

During the hearing officer's questioning, the hearing officer suggested a possible distinction with respect to what would happen if a voter appeared and either had symptoms of the virus or had been quarantined for those symptoms. The answer from Ms. Naber was quite clear. This would be no different than any other situation where an employee appeared with an infectious disease. The focus is always on keeping everyone safe and making sure no voter would infect any others.

Dr. Gwen Graddy also testified as to the COVID safety protocols put in place at PACE. See Transcript at pages 48-49. A task force was created to create those protocols. There is an option for all staff to be tested whenever they feel it is appropriate and testing is strongly encouraged by PACE. See Transcript at page 55. In-service training was provided to all employees which included education on the disease, identification of who is at risk, and the proper methods for donning and doffing of PPE equipment. See Transcript at page 56.

Ray Pope, reiterated the protocols, procedures, and safety measures implemented by PACE. He was also asked specifically if there was a reasonable basis to question whether the safety protocols at PACE that were put in place would effectively allow a safe election. His answer was emphatically in the affirmative. He correctly noted that the risks involved in having a manual election are the same risks that PACE has successfully dealt with on a daily basis for its patients and employees for the last several months. See Transcript at page 62.

The COVID-19 Pandemic.

There can be no question that the circumstances surrounding the COVID-19 pandemic are extraordinary. The federal government, the state of Michigan, local counties (Oakland, Macomb, and Wayne) and other governments have recognized the emergency created and have issued various rules and procedures. Numerous Executive and Emergency orders have been issued. CDC

and OSHA have issued Guidance with respect to both the conduct of business by essential personnel (as those at PACE are properly categorized) and now, for non-essential workers as well. As the emergency has waned somewhat, the Wayne and Oakland county orders have been rescinded in favor of the State. The State emergency orders, stay at home orders, and limitations on social gathering are either all rescinded or are scheduled to be rescinded sometime in the next several weeks depending on the progress in containment of COVID-19. Bars and restaurants in southeast Michigan are now operational for indoor seating, with restrictions on capacity and face coverings.

Like many careful employers, and because of the clients it serves, at the beginning of the pandemic, PACE quickly implemented policies to protect its employees and clients and to provide a safe workplace. The protocols and procedures in place are fully compliant with CDC and OSHA Guidance, along with the requirements and guidance suggested in the various State of Michigan emergency orders. Due to the pandemic, all employees, including CNA's, dietary technicians, and drivers are required to submit to a health screening each day they appear for work. The screening includes a no-contact temporal scanner to determine the temperature of the various individuals. At that time, the Employer also provides each employee with a complete set of PPE materials for use in the upcoming work shift.

With this implementation, the threat of a significant risk of infections has been greatly reduced. In fact, no PACE employees or patients have tested positive for the virus in at least the last fourteen (14) weeks (since the middle of April 2020). This is true despite providing full, 24/7 healthcare services to the elderly, which all agree is a group more susceptible to the virus than others. In the COVID 19 environment, PACE has provided a safe and efficient workplace for its patients and employees.

ARGUMENT

Per the Order of the Regional Director revoking the stipulated election agreements, the outstanding issue to be decided in this case is whether to conduct a manual ballot election or a mail ballot election. The Order specified that the sole criteria in that analysis should be whether a manual ballot election can be held in a “safe and effective manner” that ensures the safety of all parties, voters and Board personnel.

1. There Is No Specific Board Precedent Supporting the Order for Mail Ballots Under Present Circumstances.

In this case, both the Petitioner and Respondent agree and have stipulated on several occasions, that a manual in-person election can be held safely at each of the five sites of the Employer. *[Ex. 1]* It is submitted that such an agreement and stipulation forms more than a sufficient basis upon which to exercise discretion to order a manual ballot.

There is also a strong argument that a manual ballot election can be accomplished much more quickly than a mail ballot election as directed by the Regional Director. The current Order calls for the ballots to be counted August 28, 2020. A manual election can be held prior to that date and several dates were specified in the record. See Transcript at page 74.

The hearing testimony is uncontroverted that the Employer has very successful procedures and protocols in place to reduce the risk of infection to anyone entering the facilities of PACE. It is also uncontroverted that there have been no new infections at PACE since mid-April. See the Transcript at Page 35. In the State of Michigan and the counties of Wayne, Oakland and Macomb this is an encouraging trend of being virus free. The Union recognizes this record and feels more than comfortable, as does the Employer, that an election can be held manually and safely at the Employer sites. It is respectfully submitted that where the weight of the evidence shows that a

manual ballot can safely be conducted, the Regional Director's analysis must not ignore the position of the parties with respect to conduct of a safe manual election.

2. The Decision of the Regional Director Is Contrary to and a Departure From Existing Board Precedent.

The overwhelming weight of applicable authority and precedent provides that voting in a representation election should be done in-person. Indeed, manual elections have been characterized as the "crown jewel" of the Board election procedures and present the best "laboratory conditions" for achieving fair and undisputed election results. *San Diego Gas & Electric*, 325 NLRB No. 218, 1150 (1998) (Chairman Gould, concurring). It should not be abandoned except in rare circumstances. It is significant to note that the Regional Director cites this precedent in several places in the Decision and then ignores that preference in the end without justification by merely asserting that exceptional circumstances exist although the record evidence is to the contrary.

This concept, that representation elections should as a general rule, be conducted manually is recognized in the NLRB Case Handling Manual (Part Two), ("CHM") - Manual or Mail Ballot Election: Determination, § 11301.2; see also *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998) ("Under Board precedent and policy, the applicable presumption favors a manual, not a mail-ballot election."), citing *San Diego Gas & Electric*, 325 NLRB 1143, 1150 (1998) and the CHM section. See also *Willamette Industries, Inc.*, 322 NLRB 151 (1997) ("In the instant case, we find that the Acting Regional Director erred in directing, *sua sponte*, a mail ballot.").

It cannot be reasonably disputed that the discretion of a Regional Director is not unfettered with respect to the type of election to be held in a particular case. That discretion must be exercised within certain guidelines. The Board's CHM sets forth specific scenarios that "normally suggest the propriety of using mail elections." They are:

(a) where eligible voters are “scattered” because of their job duties over a wide geographic area;

(b) where eligible voters are “scattered” in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and

(c) where there is a strike, a lockout or picketing in progress.

NLRB Case handling Manual (Part Two) at § 11301.2.

It has been held that if any of the foregoing situations exist, the Regional Director, in the exercise of discretion should also consider the likely ability of voters to read and understand mail ballots, the availability of addresses for employees and the desires of all the parties. See, *San Diego Gas & Electric and International Brotherhood of Electrical Workers, Local Union 465, AFL-CIO*, 325 NLRB 218 (1998).

It is respectfully submitted that none of the considerations necessary to substantiate a mail ballot election are present in this case. While PACE does have five different locations, they are within close proximity of each other in the Detroit metropolitan area. Indeed, three of the locations, Detroit, Southfield and Dearborn are within a few minutes of each other. The Eastpointe and Sterling Heights facilities are both in Macomb county but are again, in reasonable proximity. Under no circumstances should this be considered a “wide geographic area.” All employees in the two proposed units are present at common locations at common times. There is clearly no strike, lockout or picketing in progress.

It is significant to note that neither the Order Revoking the Stipulation of the Parties nor the Decision cites or relies upon any of the accepted reasons for a mail ballot. The Regional Director also does not cite and chooses to ignore earlier stipulations of the parties, one of which was actually approved by the Regional Director, with respect to the manner of the election to be held. Certainly, the parties themselves are closest to the specific conditions impacting the

employees involved. Their agreement that a manual ballot can be safely conducted should carry extra weight in this case.

While the pandemic is not over, it certainly has been, at least with respect to these employees and facilities, controlled to a great degree. In stipulating to the manual ballot election, both parties, Employer and Union recognize that with the continuation of the current protocols and procedures there remains no significant risk to the safety of any participants in a manual ballot election to be scheduled by the Regional Director in consultation with the parties.

3. The Decision of the Regional Director Is Clearly Erroneous.

There are important policy considerations that weigh against the use of mail ballot elections. Specifically, “mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual ballots because of the absence of direct Board supervision over the employees’ voting.” See *Thompson Roofing, Inc.*, 291 NLRB 743, n. 1 (1988). Additionally, in-person elections are preferred because they provide for “ease of voting” and are less costly. 2 *Sisters Food Group*, 357 NLRB 1816, 1819 (2011).

There are also recognized problems with holding mail ballot elections in representation proceedings. These issues include: (1) communicating to voters the importance of the choice they are about to make; (2) secrecy of the ballot; (3) integrity of the voting process; (4) an absence of coercion on the voter; (5) maximum participation by the electorate; and (6) full opportunity for the voter to hear all points of view.

These are not just hypothetical issues or problems that may arise with mail ballots. A vivid example of that is the fact situation is presented in the recent case of *Western Wall Systems, LLC*, Case No. 28-RC-247464 decided on April 16, 2020. In that case, there was a mixed manual-mail ballot election with only seven voters designated to vote by mail ballot. The litany of problems

regarding the mail ballots included the facts that most if not all of the seven mail voters never received ballots by the designated date; five of the voters were sent duplicate ballots, but none were counted in any event because they were deemed to be improperly completed or arrived at the NLRB too late; one voter's original and duplicate ballots were returned to sender; one voter who attempted to call the NLRB with questions was told by Region 28 that they did not know anything about the ballots; and the ballots and envelopes did not recognize language issues and barriers of the largely Spanish literate workforce. As a result, none of the seven mail ballots were ever counted. The election was decided by a narrow margin and the mail ballots may have changed the result. These egregious facts in a very recent case reinforce the very good reasons why mail ballots are not preferred and should be avoided where it is safe and legitimate to vote in person.⁵

In addition, there was persuasive testimony at the formal hearing identifying numerous problems with the U.S. Postal Service in providing mail service to PACE. See Transcript at page 30. The concerns about the effects of COVID-19 on the mail system has resulted in the United States Postal Service creating a "Coronavirus Disease 2019 (COVID-19) Command Response leadership team."⁶ The focus of the leadership team is on employee and customer safety, which has resulted in numerous safety protocols being put in place for the delivery of mail. If the USPS has deemed it necessary to assemble a "command response leadership team" to address safety concerns brought on by the COVID-19 crisis, surely there are questions about the reliability of using the mail service to conduct this election. The anticipated position of the Regional Director is that there is no evidence to suggest that mail ballots will not be delivered. On the other hand,

⁵ In the recent Notice of Second Election in *Calspan*, a manual ballot is to take place on September 1, 2020. The Notice informs voters that "the election conducted by mail beginning on May 22, 2020 was set aside because the National Labor Relations Board found that inadvertent errors...interfered with the employees' exercise of a free and reasoned choice.

⁶ <https://about.usps.com/newsroom/statements/usps-statement-on-coronavirus.htm>

there is strong evidence to suggest that there has been and probably will be substantial disruption of mail service which further calls into question the viability of relying on the US Mail to conduct a mail only election. There is substantial anecdotal information that mail services are sporadic and delayed in many areas because of the USPS's response to COVID-19 and shortages of USPS employees.

Empirical data establishes that manual elections allow for the highest voter participation. In a June 2, 1994 General Counsel Memorandum to NLRB Chairman William B. Gould IV, General Counsel Fred Feinstein cited a study showing that 87.9 percent of eligible voters participated in manual elections compared to 68.14 percent who participated in mail ballot elections. See also *Nouveau Elevator Indus., Inc.*, 326 NLRB at 470-471 (“it is well known that voter turnout is considerably higher in manual as opposed to mail ballot elections and maximizing voter turnout is a legitimate objective in all elections.”).

As empirical data and the Board's position on mail ballot elections establish, ordering a mail ballot election in this case will assuredly result in lower voter participation than if a manual election is held.⁷ This is particularly true when considering the impact COVID-19 has had on mail operations and the general public. The erroneous decision of the RD to scrap a manual ballot will clearly cause prejudice to both parties. Lower voter participation is not in the best interest of either party.

Let us not forget that another crown jewel of the NLRA is to foster labor peace between unions and employees. Where that peace has been effectuated in this case by written agreements, there is really no reason to disturb those agreements. Both parties agree and recognize that the

⁷ In *U.S. Foods*, 31-RC-262089 (July 23, 2020), the Employer asserted that manual elections have historically resulted in a voter turnout of approximately 90 percent, if not greater, while rates of participation in mail ballots conducted during the pandemic have been on average, less than 50 percent, and in one case less than 10 percent.

best opportunity for laboratory conditions to secure a fair and as complete a result as possible would be to conduct in person voting at the different PACE sites.⁸ The individuals all report there on a daily basis and with the proper screening, PPE and safety protocols, there should be no difficulty in conducting those elections.

4. There Are Additional Compelling Reasons for Holding a Manual Election.

At the request of the Regional Director, PACE has submitted a detailed list of protocols that are currently in place for all employees and visitors to any of the PACE facilities. Social distancing is required and is enforced. Employees are individually screened, and temperatures are taken as they arrive at the facility. All employees have been educated on the proper use, cleaning, storage, donning and doffing of PPE. All staff and guests are provided surgical procedural masks which must always be worn in the centers. Given the number of employees involved, there would be no problem limiting the number of people in a voting room at any one time. In some of the facilities, the rooms are large enough to have the Board Agent, two observers and one or more voters in the room, at least six feet apart. Sanitation of the voting box and proximity of the voting area can certainly be effectuated frequently and as necessary. PACE is prepared to provide facemasks and gloves to all voters, observers and Board Personnel. Transcript at pages 43 and 44.

On July 6, 2020, General Counsel Peter Robb issued GC 20 -10 setting forth suggested election protocols during the COVID-19 pandemic. Among other things, the general counsel proposes self-certification that individuals in proximity to the polling place, including observers and party representatives, have not tested positive for COVID-19, or encountered someone who has tested positive within the preceding 14 days, and are not awaiting test results. Other ideas and

⁸The recent emphasis of the Union representatives focuses on going forward with mail ballots because the Union representatives expect that to be a faster way to complete the vote. As noted earlier, the Union has acknowledged that manual ballot voting can safely take place at the PACE facilities.

protocols are also included. There is nothing in those proposals that have either not already been established as procedures by PACE or which can not easily and readily be accomplished. The commitment by PACE, on the record, to ensure a safe voting environment at its five sites lends further credibility to the agreement of the parties in this case to conduct a manual election.

The Regional Director's conclusions that "extraordinary circumstances" exist in this case to mandate the use of mail ballots is not supported by substantial evidence and PACE has clearly carried its burden of proof to show that a mail ballot can be safely conducted. The Decision in this case also does not consider the strides made by the State of Michigan in southeast Michigan since the beginning of the pandemic. The Decision also does not recognize in any way the laudable and effective actions taken by PACE to quell the spread of infections at its various facilities. Given the information provided in the media that the virus can be transmitted through inanimate objects (such as paper, mail ballots, mail boxes and the like), there is still a risk involved in mail ballot elections.

The employees, through their union representatives, are fully aware of the protections available. Both parties have expressed little doubt that a manual election can be safely held after the last remaining Michigan Emergency Order has expired. That Order is due to expire on August 11, 2020.

Region 7 readily admits that it has sufficient available personnel ("who appear to be infection free") to conduct and monitor an election. Considering the robust and successful efforts of PACE, those employees should be called to duty to serve all the parties, consistent with the CHM and the strong existing Board precedent to conduct a manual election in both cases.

CONCLUSION

The decision of the Regional Director to order a mail ballot election in both cases is erroneous and inappropriate for several significant reasons. The parties clearly and obviously recognize the situation that exists at the Employer's facilities better than the Regional Director. The Decision in this case clearly departs from previous Board precedent while asserting extraordinary circumstances based on general assumptions and not record evidence. There are not direct supporting facts or reasons for the determination that an in-person election would be unsafe. The assertion of the Regional Director based on generalized discussions of COVID 19 and media coverage is unjustified and clearly causes prejudice to both parties. The robust procedures and protocols used by PACE for anyone entering the facility will allow a safe election to be held.

Moreover, it is respectfully suggested that the record evidence in these cases present an opportune time for the Board to build on the General Counsel's July 6, 2020 guidance (GC 20-10) with respect to conducting manual ballot elections during the COVID 19 pandemic or to initiate policy making through rule-making to provide Board guidance with respect to the requirements for conducting safe manual ballots in the current environment. Such a policy decision will alleviate confusion and inconsistent rulings in this area. In *Brinks Global Services, USA, Inc.* 29-RC-260969 (July 14, 2020), the Board recognizes "extraordinary circumstances" do result from the COVID-19 pandemic but most importantly stated "The Board will continue to consider whether manual elections should be directed based on the circumstances than prevailing in the region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10". In an article in Bloomberg News on June 30, 2020 discussing the General Counsel's plans for guidance with respect to the safe

conduct of manual ballot election, the article notes that the Board has only held four manual elections since the COVID 19 crisis began. [Ex. 2]

Considering the foregoing, it is submitted that the Board reverse the Decision of the Regional Director, cancel any plans for a mail ballot and schedule in-person manual ballot elections in the near future for both proposed units.⁹

Respectfully Submitted,

s/Dennis M. Devaney

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Date: July 27, 2020

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was efiled with the National Labor Relations Board and electronically served upon the opposing party on July 27, 2020 as follows:

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Terry Morgan

Regional Director – NLRB Region 7

s/Dennis M. Devaney

⁹ In the alternative, the Board should order that any mail ballots cast in either case be impounded and sequestered until the Board makes a full determination with respect to the ability of Region 7 to conduct safe manual ballots in these cases or to provide comprehensive guidance for the conduct of manual ballot elections in the time of COVID 19 via rulemaking.

Exhibit 1

Barnes, Jacki L.

From: Devaney, Dennis M. <ddevaney@clarkhill.com>
Sent: Monday, July 27, 2020 12:13 PM
To: Barnes, Jacki L.
Subject: Fwd: Filed Position Statement 07-RC-257046 and 07-RC-257047

From: Kevin Oneill <kevino21@hotmail.com>
Date: July 2, 2020 at 11:49:29 AM EDT
To: "Devaney, Dennis M." <ddevaney@clarkhill.com>, Dave Hughes
<Dave@teamsterslocal337.com>
Cc: "Rygiel, Natalie" <Natalie.Rygiel@nrlrb.gov>
Subject: Re: Filed Position Statement 07-RC-257046 and 07-RC-257047

[External Message]

I am in receipt of the employer's position Statement. The Union's priority is a safe prompt election. We prefer a manual election also, but

fear the Region is going to require a mail ballot. The Local believes a manual election can be conducted safely. Kevin O'Neill

From: Devaney, Dennis M. <ddevaney@clarkhill.com>
Sent: Thursday, July 2, 2020 11:32 AM
To: Kevin Oneill <kevino21@hotmail.com>; Dave Hughes
<Dave@teamsterslocal337.com>
Cc: Rygiel, Natalie <Natalie.Rygiel@nrlb.gov>
Subject: FW: Filed Position Statement 07-RC-257046 and 07-RC-257047

See attached.

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July 22, 2020

Re: Pace MI: 07-RC-257046 & 07-RC-257047

Dear Ms. Morgan,

I am the attorney for Teamsters Local 337. I am in receipt of Mr. Devaney's July 22, 2020 correspondence to you regarding the above. Mr. Devaney mischaracterizes the Union's position. The Union is in agreement with your recent July 17, 2020 DD & E ordering a mail ballot election. I made that quite clear at the July 6, 2020 hearing that a prompt election can only occur by having a mail ballot election. We fear too many variables of the board agents and eligible voters having a temperature or other symptoms on a manual election date that would interfere with a manual ballot election being completed. Though we wish an election could have occurred by now, under these trying times we support the Region's decision and dates of the scheduled mail ballot elections.

Very Truly Yours,



Kevin O'Neill

cc: Dennis Devaney

David Hughes

(Local 337 Organizer)



Exhibit 2

Daily Labor Report®

Labor Board to Issue Guidelines for In-Person Union Elections

By Hassan A. Kanu

June 30, 2020, 5:40 PM

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- Protocol likely to be released this week, top lawyer said
 - Robb: Measures used in recent vote provide likely model
-

The National Labor Relations Board will soon issue protocols for administering in-person union elections after proceeding with mail ballots in most contests since the start of the pandemic, General Counsel Peter Robb said during a webinar on labor issues related to the novel coronavirus.

The board has held four in-person elections since the emergence of the pandemic prompted local, state, and federal health authorities to issue social distancing guidelines and other measures to prevent the spread of the virus, Robb said during the event, which was hosted by the National Employment Law Council. Those manual, on-site elections were the result of an agreement between the petitioning unions and employers.

The NLRB will publicly release “protocols for manual elections,” likely this week, Robb said. The guidelines likely will follow procedures that companies such as Hearthside Food Solutions, LLC in Mississippi put in place to hold manual elections in late May.

Those measures included plastic barriers separating employees when casting their ballots from election observers and NLRB agents; ensuring that voting tables are separated from entrances and exits; using disposable pens and pencils; placing floor markings at 10-foot intervals to enforce social distancing; and the provision of sanitizer, wipes, masks, and gloves for all personnel.

Robb Expects Board to Weigh in

Hearthside certified ahead of its election that none of the voting employees had tested positive for the virus, Robb said. The union won the election, and the employer didn’t file any post-voting objections.

“It was done pretty easily, and fast,” Robb said, adding that the agency’s upcoming protocols for in-person contests would probably require similar procedures and safeguards.

“Those would be my suggestions as to what I think the board might accept to run a manual election,” Robb said. “I anticipate one of the parties will disagree, and it’ll be appealed to the board, and then we’ll get the board’s view on it.”

The board's three Republican members—there are two empty Democratic seats—have generally upheld on appeal decisions to hold elections via mail ballot. They've indicated in those cases that they would like to restrict the circumstances in which mail ballots can be used as a general matter.

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